

Thompson's opposition to the project "both legally and politically prevented the Secretary from approving the land transfer."⁴⁸⁸

When it became clear that Havenick wished to resort to litigation against Interior that might also include DNC Chairman Fowler, Berger stepped aside from the representation because he felt a conflict was emerging in his professional and political activities. Berger was actively involved in the DNC's efforts to broaden its outreach to Indian tribes, and was in regular contact during this time frame with Adam Crain of the DNC to that end. In fact, records show that Berger was in telephone contact with Fowler himself sometime between Aug. 11 and Aug. 15.⁴⁸⁹ Though Berger acknowledged that Havenick hired him in part for his Democratic connections, he could not recall discussing the Hudson matter with Fowler; yet, he would not rule out that he may have spoken with Fowler just to give "fair warning" that litigation could result and that the tribes and interested parties might be able to work out a resolution of the matter.⁴⁹⁰ Fowler had no recollection of his contact with Berger at this time.

One month after the denial, on Aug. 15, Havenick recalls he encountered Terence McAuliffe, the National Finance Chairman of the Clinton/Gore '96 Committee, at a campaign event at the Biltmore Hotel in Coral Gables, Fla. Havenick had known McAuliffe since the mid-1980s, when they had met during other Democratic fund-raising activities. Although Havenick had not seen McAuliffe in several years, he reported that McAuliffe recognized him instantly

⁴⁸⁸Letter from Mitchell Berger to Fred Havenick, Aug. 28, 1995.

⁴⁸⁹DNC Trustee Director Ari Swiller made notes of a Fowler fund-raising conversation with Berger relating to "Indians," which apparently transpired on August 15.

⁴⁹⁰M. Berger G.J. Test. at 149-51.